



POLICE DEPARTMENT

September 19, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Rodney Branch
Tax Registry No. 929768
Transit Bureau District 34
Disciplinary Case No. 2010-314

The above-named member of the Department appeared before me on May 15, 2012, charged with the following:

1. Said Police Officer Rodney Branch, assigned to Police Service Area #3, while off-duty, on or about September 21, 2008, having been involved in an unusual police incident, did thereafter failed to report said incident to the Patrol Supervisor, Precinct of Occurrence, as required. *(As amended)*

P.G. 212-32, Page 1, Paragraphs 1 & 2 FAILURE TO REPORT A POLICE INCIDENT

2. Said Police Officer Rodney Branch, assigned as indicated in Specification #1, while off-duty, on or about July 4, 2009 and July 19, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer after being involved in a verbal dispute with Person A the mother of his children, regarding child visitation issues, called the police to request assistance in visiting his children and failed to identify himself as a member of the service during the telephone calls.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED GENERAL REGULATIONS

3. Said Police Officer Rodney Branch, assigned as indicated in Specification #1, on or about July 1, 2002 through May 26, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer resided at two New York City Housing Authority locations with his mother and failed to inform said agency of his income level and status as a tenant.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED GENERAL REGULATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 1. He entered a plea of Guilty to Specification Nos. 2 and 3 and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 2 and 3. Respondent is found Not Guilty of Specification No. 1.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on Sunday, September 21, 2008, Respondent, who was off duty, was at the residence of Police Officer Person B [REDACTED]
[REDACTED]
Person A, who is the mother of the Respondent's two children and had sole custody of the children, arrived unexpectedly and unannounced [REDACTED] with the two children and asked Respondent to take the children for the day even though no prior arrangement had been made. Respondent refused Person A's request. He entered Person B's apartment and closed the door. Person A repeatedly knocked on the door of the apartment. Person A then telephoned 911 and told the operator that she and her "husband" had argued and that he was inside an apartment with another police

officer. As a result of Person A's call, two on duty uniformed officers assigned to the

█████ Precinct responded to Person B's apartment and spoke to Person A and Respondent.

The Department's Case

The Department called Sergeant Alexander Crouch as its only witness.

Sergeant Alexander Crouch

Sergeant Crouch, a 14-year member of the service (MOS) who has been assigned to the Transit Bureau Investigations Unit (TBIU) for five years, was assigned to investigate the incident that occurred on September 21, 2008, which involved an allegation that Respondent had been involved in an off-duty domestic incident and had subsequently failed to notify the Department of his involvement in the matter.

On September 22, 2008, Crouch interviewed Person A who told him the following: On September 21, 2008, she had attempted to locate Respondent because she wanted to drop their children off with him. After she was initially unable to locate him, Person A went to ██████████ where she knew Person B resided. Outside of the building, in front of Person B, Person A attempted to give the children to Respondent. A verbal dispute arose between Person A and Respondent when he told her he was unable to take the children at that time. Respondent and Person B then entered the building. Person A entered the building, proceeded to Person B's apartment and began knocking repeatedly on the door.

When Crouch was asked how long Person A had knocked on Person B's door, he testified that he did not note on his interview worksheet how long Person A had claimed

that she had knocked on Person B's door. Person A did state that while she was knocking on the door, she spoke to Respondent through the door that he had to take the children from her. She also attempted to telephone Respondent, but was unable to contact him. At some point, Respondent requested that Person A leave the premises and take the children with her. She stated that she subsequently called 911.

Crouch ascertained that Police Officers Scarella and Welch, who were assigned to the ■ Precinct, were the officers who responded to Person A's call. Person A informed the officers that she had placed the call. The officers knocked on Person B's apartment door and spoke with Respondent and Person B. Respondent and Person B both identified themselves to the officers as MOS. Sergeant Isaac Franco, ■ Precinct Patrol Supervisor, also responded to Person B's apartment. When he arrived, Scarella and Welch provided him with the details of the incident and Franco ordered everyone to go the ■ Precinct.

Crouch stated that a charge of misconduct had been substantiated against Respondent for failing to notify the Department of his involvement in the September 21, 2008 incident. Crouch testified that he was familiar with Patrol Guide Section 212-32 pertaining to off duty incidents involving MOS and that a MOS who was involved in an off duty incident as either a witness or participant had an obligation to report their involvement to the Department. Crouch opined that the September 21, 2008 incident fell under Patrol Guide Section 212-32 requirements because Respondent and Person A had engaged in a verbal dispute in front ■, because after Respondent and Person B entered Person B's apartment, Person A had followed them there and had repeatedly knocked on the door in an attempt to get Respondent to come out, and because Person A had called 911 and requested police assistance.

Crouch recalled that at an official Department interview conducted on May 1, 2009, Respondent had indicated that Person A had repeatedly knocked on the door of [REDACTED]'s apartment as she was telling him to take his children and that Person A had started knocking on the apartment door about ten minutes after their first interaction outside the apartment building.

On cross-examination, Crouch stated that Person A had been interviewed about five times. Crouch agreed that on September 21, 2008, Person A had full legal custody of the children and that no shared custody agreement or Court Ordered visitation existed. Crouch confirmed that Person B's apartment was on the [REDACTED] floor of the building and that several apartments were located on each floor. Crouch's investigation determined that none of Person B's neighbors had made a complaint or called 911 to report loud door knocking or arguing or hearing a domestic incident or fight occurring inside or outside of the building. Person A was the only person who called 911 that day to report the interaction between her and Respondent. Someone did call 911 to complain about an incident outside the building, but not about any incident inside the building.

Crouch agreed that there was no evidence that any arrangement or agreement had been made between Respondent and Person A that would require Respondent to watch their children that day. Person A told Crouch that she wanted Respondent to watch the children that day because she "had things to do." Crouch confirmed that although a Domestic Incident Report (DIR) was prepared regarding this incident, no "61" (Complaint Report) was prepared. Person A made no allegations against Person B. No witnesses came forward to claim that they had observed a verbal dispute outside the building or a dispute at Person B's apartment.

Crouch confirmed that when Person A called 911, she told the operator that she was involved in an argument with her “husband.” Crouch confirmed that Person A is not legally married to Respondent. Crouch agreed that based on his investigation, it would be fair to say the dispute was solely based on Person A’s desire for Respondent to take care of the children and Respondent’s refusal to do so. Crouch confirmed that Respondent had no visitation rights regarding the children, nor any legal duty to take charge of them at Person A’s request.

Respondent’s Case

Respondent testified on his own behalf.

Respondent

Respondent testified that Person A was his ex-girlfriend and the mother of his two children. His children were eleven and seven. At the time of this trial, Respondent had obtained a Court Order allowing him to visit his children one weekend each month. Person A has always had full custody of the custody. Respondent paid child support for the children.

Respondent acknowledged that on July 4, 2009 and July 19, 2009, he called 911 regarding child visitation issues and failed to identify himself as a MOS to the 911 operator. Respondent explained that he had called Person A and his daughter answered. She said they were not coming down stairs. Respondent then proceeded to call the 67 Precinct. He asked whether a sector unit could come to his location. They told him they were busy and that he should call 911. Respondent then called 911 as directed and

informed the operator of the situation. He told the operator that he was scheduled to pick up his children that day and that Person A was not allowing him to do so. At the time of the two incidents, there had been an agreement between Respondent and Person A for Respondent to see the children those two days. The arrangement had been agreed to prior to those dates. On each of those days, Person A did not allow Respondent to see the children.

Although Respondent did not identify himself as a MOS when he called 911, once the officers responded, he showed them his ID and he identified himself. Respondent testified that his failure to identify himself as a MOS when he called 911 was an oversight and that he is now aware that he must identify himself as a MOS whenever he calls 911.

With regard to Specification No. 3, Respondent testified that during the period between July 1, 2002 and May 26, 2009, he resided part time with his mother at [REDACTED] [REDACTED] a New York City Housing Authority (NYCHA) complex. His mother also lived in another Housing Authority complex [REDACTED] during that time. Respondent did not exclusively live at either address. He moved around frequently when he was in the military because his unit would be deployed and because he had changed units. Sometimes Respondent stayed at his sister's residence but when their mother became ill and had heart surgery, Respondent returned to his mother's residence to help care for her. His living situation during the charged period was dependent on how his mother felt at the time and his military assignments.

While he was living with his mother, he did not provide financial information to NYCHA for either address. He was not aware he had to because he was "jumping

around" and did not have a full time residence. However, during that seven year time span Respondent spent quite a bit of time at the Housing Authority buildings. At the time of trial, Respondent resided [REDACTED]. He was not living in a Housing Authority complex, but rather in an apartment.

On September 21, 2008 Person A's relationship with Respondent was as the mother of his children. Person A had full custody. Respondent did not have any Court Ordered visitation. Additionally, there was no regularly scheduled visitation that was agreed to. Respondent was not seeing his children on a regular basis. At the time of the incident, the children were approximately seven and three. Respondent stated that he did not frequently see his children because visitation was always on Person A's schedule and never based on his. Respondent worked midnights. He stated that there was a conflict of interests.

Respondent was not getting along well with Person A at the time of the incident. He believed they would have still been together had they been getting along well. Prior to arriving at the apartment on September 21, 2008, Person A never called Respondent to ask him to take care of the children. They had made no agreement that he would visit or watch the children on that date. Before that date, Respondent could not recall when he had last seen Person A, but stated that it had been a while. It had been over a week. When the incident occurred, Respondent had not been in regular telephone contact with Person A.

He first saw Person A on the sidewalk in front of the building on September 21, 2008. He was not with anyone when he first saw her. Respondent recognized her car as she pulled up to the building. At that point, he went inside. Person A did not say anything

to him. Respondent did not see that she was with the children when she pulled up to the building. Person A followed Respondent into the building. Respondent went to go to the elevator. At that point, he saw his children. When Person A saw Respondent by the elevator, she told him to take the children because she had to get her hair and nails done or something of that nature. Respondent denied her request. Person A then told Respondent he had to take them because she had "to do some running around," and she had no place to take them. He informed her he had to work midnight that day and needed to sleep. At that point, Respondent entered the elevator. He went to the [REDACTED] floor and entered Person B's apartment. Approximately ten minutes later he heard Person A knocking on Person B's door. While knocking on the door, Person A kept telling Respondent to take his children. Respondent told her through the door to take them home. After which Respondent walked away from the door. Person A continued to knock, but eventually stopped. Respondent never called 911 during the incident because he felt "it was nothing." Nor did Person B express any desire for Respondent to call 911. Person A never stated that she was going to call 911 or even threaten to do so.

Respondent received a call and 15 minutes later a police officer from the [REDACTED] Precinct knocked on the door. When the officer identified himself, Respondent identified himself as well. The officer informed him that a woman outside had called 911. She had said something about wanting Respondent to take the children. Respondent stayed in the apartment until the sergeant came. At that point, they all went downstairs to the RMP and drove to the [REDACTED] Precinct. The sergeant never asked any questions about the incident. However, once at the precinct, the duty captain questioned Respondent. Respondent informed him what had happened. Respondent was interviewed by the Department that

night. Respondent's duty status was not changed that night, nor was Respondent arrested. Based on his knowledge of the Patrol Guide, Respondent did not feel he had an obligation to report the incident with Person A.

On cross-examination, Respondent confirmed that he began working for the Department on July 1, 2002. When he applied for the position, Respondent was required to provide the Department with the location of his residence. He initially informed the Department he resided [REDACTED]. The residence was a New York City Housing Authority location. Respondent had been living with his mother at the time. He never notified the Department that he had moved to another location. Respondent never lived with Person A. However, he did live with his sister [REDACTED] [REDACTED]. He never notified the Department he lived at that residence.

Although Respondent began receiving a paycheck from the Department after he was appointed on July 1, 2002, Respondent did not notify NYCHA about his appointment. Respondent asserted that he was unaware there was a requirement for each person living within a NYCHA location to indicate their annual income. Additionally, he was unaware if he was listed as a tenant at the [REDACTED] residence. Respondent never provided any documentation to anyone within the NYCHA regarding his income as a police officer.

Respondent's mother moved to a different location, [REDACTED] [REDACTED]. This residence was located within the same housing complex as her previous address. Respondent agreed that he lived with his mother at that location for a period of time. He stayed with her in order to assist her because she had health issues

that included a heart condition. Respondent stated that he never notified the Department he moved to that residence. When subsequently asked whether he submitted a change of residence form [REDACTED] on October 11, 2007, Respondent could not remember. He confirmed that he lived at [REDACTED] until May 2009. While living there, he never notified the NYCHA of his income as a New York City Police Officer.

On September 21, 2008, Person B lived at [REDACTED]. While Respondent was outside Person B's residence, Person A arrived with their children. Person B was not there when Person A first arrived but arrived later arrived. Respondent testified that profanity was never exchanged between Person B and Person A, nor did Person A yell at Person B. After entering the building, Person A told Respondent to take his children because she "had something to do." Respondent's children ran to him and he hugged them. Respondent informed his children he was unable to take them because he had to work that night and had to sleep. This occurred at approximately 4:00 p.m.

Respondent clarified that when he worked midnights, his tour began at 11:15 pm. Respondent could not recall whether he and Person B had planned to do anything alone before he began his tour. He indicated that he only saw his children when there was a pre-planned arrangement. Prior to September 21, 2008, he would only agree to see his children if a pre-planned arrangement had been made. However, he stated that if Person A had had an emergency to take care of, he would have taken his children regardless of whether there was a pre-planned arrangement because his "children [came] first in an emergency." Person A had to run personal errands though and did not have an emergency that day.

Respondent estimated that 15 minutes passed between the time Person A arrived [REDACTED] and when Person A began knocking on the door to Person B's apartment. When Person A first began knocking on the door, she told Respondent to take the children because she had to get her hair and nails done. Respondent described Person A's tone of voice as regular. The apartment door was closed when Person A was knocking on the door, but Respondent was still able to hear her talking on the other side. Respondent did not agree that Person A was yelling at him to take his children. Person A knocked on the door for about thirty seconds. At that point, Respondent walked away from the door. Approximately ten minutes later, there was another knock at the door. When Respondent answered the door, police officers were there.

There was no Court Order or visitation established between Respondent and Person A. At some point, there was an Order by the Court allowing Respondent to have scheduled visitation with his children. There had been a valid Court Order in place on both July 4, 2009 and July 19, 2009. On July 4, 2009, Respondent went to Person A's residence to pick his children up. He spoke to his daughter on the telephone at that time. His daughter informed him, Person A had told her she could not go with Respondent. Respondent did not enter the apartment building where Person A lived. Additionally, he did not have a conversation with Person A regarding what his daughter had told him. Based on his daughter's statement and the fact that Person A came downstairs with the children and walked past him, Respondent called 911. Respondent informed the Court that he called 911 because of criminal contempt. He elaborated that he had a document stating he had his children on a particular date and Person A would not allow him to have his children that day.

Respondent reiterated that after he told Person A he could not take the children that day he went into Person B's apartment and closed the door. Person A subsequently knocked on the door and stated that he had to take the children because she wanted to go and have her hair and nails done. He told her again he could not take the children. Respondent testified that Person A never stated that she was going to call 911 and he was unaware that she had done so until two uniform officers knocked on the door of Person B's apartment. Respondent identified himself to them as a MOS and told them to call the sergeant. The sergeant subsequently arrived. The sergeant then called the Duty Captain who informed the sergeant they had to go to the precinct. The sergeant was the Patrol Supervisor for the [REDACTED] Precinct.

FINDINGS AND ANALYSIS

Specification Nos. 2 and 3

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 2 and 3.

Specification No. 1

It is charged that on September 21, 2008, Respondent failed to report to the Patrol Supervisor, Precinct of Occurrence that he had "been involved in an unusual police incident." I find Respondent Not Guilty because the Department did not present evidence which sufficiently established that the purely verbal interaction between Respondent and Person A in front [REDACTED] or Person A's subsequent action of knocking on the door of Person B's apartment and asking him to take the children rose to the level of "an

unusual police incident" that would trigger a duty on Respondent's part to contact the Patrol Supervisor.

The mostly undisputed facts regarding Person A's persistent stalking of Respondent on September 21, 2008, paint a sympathetic picture of Respondent doing his best to avoid any confrontation with Person A that could constitute an unusual police incident. Crouch confirmed that Person A told him that because she "had things to do," she decided on her own and without any prior discussion with Respondent or notice to him, that she would go and find him and drop off their children with him for the day. Respondent first learned of her intention to make him the babysitter for the day when she approached him and Person B outside the building Person B resided in. The record shows that after a very brief conversation during which Respondent told Person A that he was not able to watch their children that day, he and Person B entered her apartment as quickly as possible to avoid a public confrontation with Person A. Person A's provocative action of entering the building, going to Person B's apartment, knocking on the door, and asking Respondent to take their children was met by restraint on the part of Respondent. I find that after Respondent continued to refuse her request, a petulant [REDACTED] decided to make trouble for him by calling 911 and requesting that officers respond without letting him know that she had done this.

Despite the fact that Respondent did nothing more than just say "no" to Person A, he would, nonetheless, be guilty as charged if the Department had been able to show that Person A had created such a disturbance that Respondent was clearly required to report her actions to the Patrol Supervisor. The record here does not sufficiently establish that Person A's words or actions rose to that level. The Department presented no evidence that

Person A ever yelled or screamed at Respondent outside or inside the building. Although Crouch's investigation determined that someone had called 911 to complain about an incident outside the building, the record is devoid of any direct connection between this 911 call and the conversation Person A and Respondent had outside the building.

Also, although it is not disputed that Person A repeatedly knocked on the door of Person B's apartment as she asked Respondent to take the children, the record does not establish that this knocking was so loud, or continued for so long, that her knocking could be said to constitute an unusual police incident. Crouch could not recall, and did not note in his interview report, how long Person A had claimed to have knocked on Person B's door. If this knocking had been loud or prolonged, it would most likely have aggravated at least some of Person B's neighbors and it is likely that at least one of them would have called 911, but Crouch confirmed that no one called 911 to complain about Person A's knocking.

Since the Department did not meet its burden of proof, Respondent is found Not Guilty of Specification No. 1.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that on two occasions during July,

2009, after verbal disputes with Person A, the mother of his children, regarding child visitation issues, when he called for police assistance regarding visiting his children, he failed to identify himself as a MOS during the telephone calls. Although Respondent should have told the 911 operator that he was a MOS, his failure to do so is mitigated by the fact that Respondent knew that his calls would result in uniformed officers responding and by the fact that he identified himself as a MOS to the responding officers on both occasions. That he identified himself as a MOS to the responding officers indicates that he was not trying to hide the fact that he was a MOS.

Respondent has also pleaded Guilty to engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that he resided at two NYCHA locations with his mother and failed to inform NYCHA of his income level and status as a tenant. Although Respondent should have informed NYCHA of his presence as a resident, his failure to do so is mitigated by his unrefuted testimony that during the charged period he was never a permanent, full-time resident at either of his mother's apartments and that the reason that he stayed with his mother, when he was not on military duty with his National Guard unit, was to help care for her after she became ill and underwent heart surgery. Also, the fact that he provided the Department with the address of his mother's apartment shows that he was not trying to hide from the Department the fact that he was residing in a NYCHA housing complex.

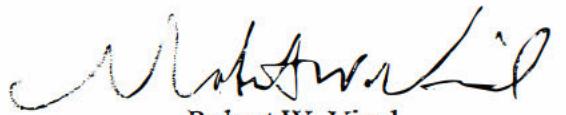
In formulating a penalty recommendation, I have also taken into consideration Respondent's lack of a prior disciplinary record during his ten years of service.

The Assistant Department Advocate recommended that Respondent forfeit 20 vacation days as a penalty. Since Respondent has been found Not Guilty of Specification

No. 1, and taking into consideration the mitigating factors cited above, I recommend that a lesser penalty be imposed.

I recommend that Respondent forfeit ten vacation days.

Respectfully submitted,

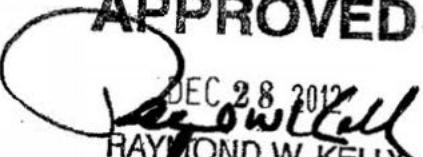


Robert W. Vinal

Assistant Deputy Commissioner Trials

APPROVED

DEC 28 2012



RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

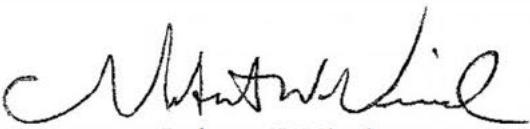
From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RODNEY BRANCH
TAX REGISTRY NO. 929768
DISCIPLINARY CASE NOS. 2010-314

The Respondent received an overall rating of 3.0 on his 2011 performance evaluation, 3.0 on his 2010 evaluation, and 3.0 on his 2009 evaluation. He has been awarded two Excellent Police Duty medals. [REDACTED]
He has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials